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### Title 04 Chapter 01: Utah Agricultural Code General Provisions - 1995

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# CHAPTER 1

## SHORT TITLE AND GENERAL PROVISIONS — DEFINITIONS

### Part 1

#### Short Title and General Provisions

Section		Section	
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### Part 2

#### Definitions

General definitions.

## PART 1

### SHORT TITLE AND GENERAL PROVISIONS

#### 4-1-1. Short title.

This title shall be known and may be cited as the "Utah Agricultural Code."

**History:** C. 1953, 4-1-1, enacted by L. 1979, ch. 2, § 2.

**Cross-References.** — Age requirement inapplicable to agricultural labor, § 34-23-207. Agricultural cooperatives, Title 3, Chapter 1. Agricultural experiment station and extension service, §§ 53B-18-101 to 53B-18-206. Farm name registration, Title 42, Chapter 3. Nuisance, exemption of certain agricultural

operations, §§ 78-38-7, 78-38-8.

Right of tenant of agricultural lands to hold over, § 78-36-4.

Tax assessment of farm land, Utah Const., Art. XIII, Sec. 3; §§ 59-2-501 to 59-2-515.

Utah State University, Title 53B, Chapter 18.

Wage payment requirements, applicability to agricultural labor, § 34-28-1.

#### 4-1-2. Construction.

This code shall be liberally construed and applied to promote and effectuate its policies and purposes.

**History:** C. 1953, 4-1-2, enacted by L. 1979, ch. 2, § 2.

#### COLLATERAL REFERENCES

C.J.S. — 3 C.J.S. Agriculture §§ 5, 6.

**Key Numbers.** — Agriculture ☞ 1.

#### 4-1-3. Principles of law and equity applicable.

Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions.

History: C. 1953, 4-1-3, enacted by L.  
1979, ch. 2, § 2.

#### **4-1-3.5. Procedures — Adjudicative proceedings.**

The Department of Agriculture and its divisions shall comply with the procedures and requirements of Title 63, Chapter 46b, in their adjudicative proceedings.

History: C. 1953, 4-1-3.5, enacted by L.  
1987, ch. 161, § 8.

#### **4-1-4. Code enforcement — Inspection authorized — Condemnation or seizure — Injunctive relief — Costs awarded — County or district attorney to represent state — Criminal actions — Witness fee.**

(1) For the purpose of enforcing any provision of this code, the Department of Agriculture may enter, at reasonable times, for the purpose of inspection, any public or private premises where agricultural products are located and may obtain samples of products at no charge to the department, unless otherwise specified within a particular chapter in this code.

(2) The department may proceed immediately, if admittance is refused, to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of making inspections and obtaining samples.

(3) The department is authorized in any court of competent jurisdiction to seek an order of seizure or condemnation of any agricultural product which violates any chapter contained within this code or, upon proper grounds, to obtain a temporary restraining order or temporary or permanent injunction to prevent violation of any such chapter. No bond shall be required of the department in any injunctive proceeding brought under this section.

(4) If condemnation is ordered, the agricultural product shall be disposed of as the court directs; provided, that in no event shall it order condemnation without giving the claimant of the agricultural product an opportunity to apply to the court for permission to bring the product into conformance or for permission to remove it from the state.

(5) If the court orders condemnation, court costs, fees, storage, and other costs shall be awarded against the claimant.

(6) Unless otherwise specifically provided within the particular chapter governing the product sought to be seized or condemned or the conduct sought to be enjoined, the county attorney of the county in which the product is located or the act committed shall represent the department in any action commenced under authority of this section.

(7) In any criminal action brought by the department for violation of any provision contained within a chapter in this code, the county attorney or district attorney in the county in which the alleged criminal activity occurred shall represent the state; provided, that before any criminal action is commenced by the department, it shall first give written notice of its intent to file criminal charges to the person it intends to charge and afford such person an opportunity to present, personally or through counsel, such person's views with respect to the contemplated action.

(8) Any witness subpoenaed by the department for whatever purpose, is entitled to a witness fee for each day of required attendance at proceedings initiated by the department and to mileage in accordance with the fees and mileage allowed witnesses appearing in the district courts of this state.

**History:** C. 1953, 4-1-4, enacted by L. 1979, ch. 2, § 2; 1993, ch. 38, § 1.

**Amendment Notes.** — The 1993 amendment, effective May 3, 1993, inserted “or district attorney,” substituted “state” for “depart-

ment,” and made a stylistic change in Subsection (7).

**Cross-References.** — Witness fees and mileage in district courts, § 21-5-4.

#### COLLATERAL REFERENCES

C.J.S. — 3 C.J.S. Agriculture § 7.

### **4-1-5. Suspension or revocation of license or registration — Judicial review — Attorney general to represent department.**

(1) If the department has reason to believe that a licensee or registrant is or has engaged in conduct that violates this title, it shall issue and serve a notice of agency action.

(2) The commissioner, or the hearing officer designated by the commissioner, may suspend or revoke a person's license or registration if the commissioner or hearing officer finds by a preponderance of the evidence that the person is engaging, or has engaged, in conduct that violates this title.

(3) (a) Any person whose registration or license is suspended or revoked under this section may obtain judicial review.

(b) Venue for judicial review of informal adjudicative proceedings is in the district court in the county where the alleged acts giving rise to the suspension or revocation occurred.

(4) The attorney general shall represent the department in any original action or appeal commenced under this section.

**History:** C. 1953, 4-1-5, enacted by L. 1979, ch. 2, § 2; 1987, ch. 161, § 9.

### **4-1-6. Fees and late charges.**

If an annual registration, license, or other fee is imposed under any chapter of this code, it shall be determined by the department pursuant to Subsection 4-2-2(2). If the renewal of the registration or license is conditioned, among other things, upon the payment of a renewal fee on or before a specified date, the department shall charge and collect the renewal fee and a late fee on any license or registration which is renewed after the date specified for renewal in the applicable chapter. The renewal fee and late fee shall be determined by the department pursuant to Subsection 4-2-2(2).

**History:** C. 1953, 4-1-6, enacted by L. 1979, ch. 2, § 2; 1984 (2nd S.S.), ch. 15, § 5; 1985, ch. 130, § 1.

**4-1-7. Severability clause.**

If any provision of this code or the application of any such provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

**History:** C. 1953, 4-1-7, enacted by L. 1979, ch. 2, § 2.

**PART 2****DEFINITIONS****4-1-8. General definitions.**

Subject to additional definitions contained in the chapters of this title which are applicable to specific chapters, as used in this title:

(1) "Agriculture" means the science and art of the production of plants and animals useful to man including the preparation of plants and animals for human use and disposal by marketing or otherwise.

(2) "Agricultural product" or "product of agriculture" means any product which is derived from agriculture, including any product derived from aquaculture as defined in Section 4-37-2 [4-37-103].

(3) "Commissioner" means the commissioner of the Department of Agriculture.

(4) "Department" means the Department of Agriculture created under Chapter 2 of this title.

(5) "Livestock" means cattle, sheep, goats, swine, horses, mules, poultry, or any other domestic animal or domestic furbearer raised or kept for profit.

(6) "Organization" means a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

(7) "Person" means a natural person or individual, corporation, organization, or other legal entity.

**History:** C. 1953, 4-1-8, enacted by L. 1979, ch. 2, § 2; 1987, ch. 127, § 1; 1988, ch. 42, § 1.

**Compiler's Notes.** — Section 4-37-2, cited in Subsection (2), was renumbered in 1994 as § 4-37-103.

**COLLATERAL REFERENCES**

**Am. Jur. 2d.** — 3 Am. Jur. 2d Agriculture §§ 1, 2.

**C.J.S.** — 3 C.J.S. Agriculture § 2.

## CHAPTER 2

# DEPARTMENT — STATE CHEMIST — ENFORCEMENT

**Part 1****Department Organization**

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4-2-1.	Department created.
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4-2-5.	Submission of department's budget.
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4-2-7.	Agricultural Advisory Board created — Composition — Responsibility — Terms of office — Compensation.
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4-2-11.	Attorney general legal advisor for department — County or district attorney may bring action upon request of department for violations of title.
4-2-12.	Notice of violation — Order for corrective action.
4-2-13.	Repealed.
4-2-14.	Violations of title unlawful.
4-2-15.	Civil and criminal penalties — Costs — Civil liability.

**PART 1****DEPARTMENT ORGANIZATION****4-2-1. Department created.**

There is hereby created within state government the Department of Agriculture which is responsible in this state for the administration and enforcement of all laws, services, functions, and consumer programs related to agriculture as assigned to the department by the Legislature.

**History:** C. 1953, 4-2-1, enacted by L. 1979, ch. 2, § 3.

**COLLATERAL REFERENCES**

**Am. Jur. 2d.** — 3 Am. Jur. 2d Agriculture § 20.

**C.J.S.** — 3 C.J.S. Agriculture §§ 15 to 24.  
**Key Numbers.** — Agriculture ☞ 2.

### **4-2-2. Functions, powers, and duties of department — Fees for services — Marketing orders — Procedure.**

(1) The department has and shall exercise the following functions, powers, and duties:

(a) to inquire into and promote the interests and products of agriculture and its allied industries;



- (b) to promote methods for increasing the production and facilitating the distribution of the agricultural products of the state;
- (c) (i) to inquire into the cause of contagious, infectious, and communicable diseases among livestock and the means for their prevention and cure; and
  - (ii) to initiate, implement, and administer plans and programs to prevent the spread of diseases among livestock;
- (d) to encourage experiments designed to determine the best means and methods for the control of diseases among domestic and wild animals;
- (e) to issue marketing orders for any designated agricultural product to:
  - (i) promote orderly market conditions for any product;
  - (ii) give the producer a fair return on the producer's investment at the marketplace; and
  - (iii) only promote and not restrict or restrain the marketing of Utah agricultural commodities;
- (f) to administer and enforce all laws assigned to the department by the Legislature;
- (g) to establish standards and grades for agricultural products and fix and collect reasonable fees for services performed by the department in conjunction with the grading of agricultural products;
- (h) to establish operational standards for any establishment which manufactures, processes, produces, distributes, stores, sells, or offers for sale any agricultural product;
- (i) to gather and analyze climatological data for the benefit of all state agencies;
- (j) to promulgate, subject to Title 63, Chapter 46a, the Utah Administrative Rulemaking Act, rules necessary for the effective administration of the agricultural laws of the state;
- (k) to make investigations, subpoena witnesses and records, conduct hearings, issue orders, and make recommendations concerning all matters related to agriculture;
- (l) (i) to inspect any nursery, orchard, farm, garden, park, cemetery, greenhouse, or any private or public place which may become infested or infected with harmful insects, plant diseases, noxious or poisonous weeds, or other agricultural pests;
  - (ii) to establish and enforce quarantines;
  - (iii) to issue and enforce orders and regulations for the control and eradication of pests, wherever they may exist within the state; and
  - (iv) to perform other duties relating to plants and plant products considered advisable and not contrary to law;
- (m) to inspect apiaries for diseases inimical to bees and beekeeping;
- (n) to take charge of any agricultural exhibit within the state, if considered necessary by the department, and award premiums at that exhibit;
- (o) to assist the State Soil Conservation Commission in the administration of Title 4, Chapter 18, the Soil Conservation Districts Act and administer and disburse any funds which are available for the purpose of assisting soil conservation districts in the state in the conservation of the state's soil and water resources; and
- (p) to perform any additional functions, powers, and duties provided by law.

(2) Unless otherwise provided by statute, the department may adopt a schedule of fees assessed for services provided by the department. The fee shall be reasonable and fair, and shall be submitted to and approved by the Legislature as part of the department's annual appropriations request. The department may not charge or collect any fee proposed in this manner without approval by the Legislature.

(3) (a) No marketing order issued under Subsection (1)(e) is effective until:

(i) notice of the proposed order is given to the producers and handlers of the affected product;

(ii) a hearing conducted by the commissioner is held on the proposed order; and

(iii) at least 50% of the registered producers and handlers of the affected products vote in favor of the proposed order.

(b) The department may establish boards of control to administer marketing orders and the proceeds derived from any order. It shall be the responsibility of a board of control to:

(i) ensure that all proceeds are placed in a depository institution approved by the commissioner in an account in the name of the board of control; and

(ii) ensure that the account is annually audited by an accountant approved by the commissioner.

(4) Funds collected by grain grading, as provided by Subsection (1)(g), shall be deposited in the General Fund as dedicated credits for grain grading.

**History:** C. 1953, 4-2-2, enacted by L. 1979, ch. 2, § 3; 1980, ch. 1, § 1; 1981, ch. 11, § 1; 1982, ch. 2, § 1; 1982, ch. 4, § 1; 1984 (2nd S.S.), ch. 15, § 6; 1985, ch. 104, § 1; 1985, ch. 130, § 2; 1990, ch. 157, § 1.

**Cross-References.** — Bee inspection, Chapter 11 of this title.

Counties may provide for destruction of plant pests, § 17-5-223.

Livestock disease control, Chapter 31 of this title.

Poultry disease control, Chapter 29 of this title.

Soil Conservation Districts Act, §§ 17A-3-801 to 17A-3-807.

Weed control, §§ 4-17-1 to 4-17-11.

#### COLLATERAL REFERENCES

C.J.S. — 3 C.J.S. Agriculture §§ 19 to 22.

### 4-2-3. Administration by commissioner.

Administration of the department is under the direction, control, and management of a commissioner appointed by the governor with the advice and consent of the Senate. The commissioner shall serve at the pleasure of the governor. The governor shall establish the commissioner's compensation within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

**History:** C. 1953, 4-2-3, enacted by L. 1979, ch. 2, § 3; 1991, ch. 114, § 1.

**Amendment Notes.** — The 1991 amendment, effective July 1, 1991, deleted "and be compensated in accordance with the wage and salary classification plan specified in § 67-8-13.2" at the end of the second sentence and added the third sentence.

**Cross-References.** — Advisory Counsel on Science and Technology membership, § 9-2-504.

Agricultural and Wildlife Damage Prevention Board, ex officio chairman, § 4-23-4.

Dairy commission, ex officio membership, § 4-22-2.

Livestock Market Committee, commissioner



ex officio chairman, § 4-30-2.

Soil Conservation Commission, ex officio chairman, § 4-18-4.

#### **4-2-4. Organization of divisions within department.**

The commissioner shall organize the department into divisions, as necessary, for the efficient administration of the department's business.

**History:** C. 1953, 4-2-4, enacted by L. 1979, ch. 2, § 3; 1987, ch. 15, § 1.

**Sunset Act.** — See Section 63-55-204 for the repeal dates of the divisions of the department.

#### **4-2-5. Submission of department's budget.**

The commissioner, on or before October 1 of each year, shall submit an itemized budget for the department to the governor. The proposed budget shall contain a complete plan of proposed expenditures and estimated revenues for the ensuing fiscal year and shall be accompanied by a statement setting forth the revenues and expenditures for the fiscal year next preceding, and the current assets and liabilities of the department, including restricted revenue accounts and dedicated credits.

**History:** C. 1953, 4-2-5, enacted by L. 1979, ch. 2, § 3.

dures, Title 63, Chapter 38.

Reports of state officers generally, §§ 67-10-1, 67-10-2.

**Cross-References.** — Budgetary proce-

#### **4-2-6. Official seal — Authentication of records.**

The department shall adopt and use an official seal, a description and impression of which shall be filed with the Division of Archives. Copies of official department records, documents, and proceedings may be authenticated with the seal attested by the commissioner.

**History:** C. 1953, 4-2-6, enacted by L. 1979, ch. 2, § 3; L. 1984, ch. 67, § 1.

and Records Service, § 63-2-901.

Manner of affixing seals, § 68-3-9.

**Cross-References.** — Division of Archives

#### **COLLATERAL REFERENCES**

**C.J.S.** — 79 C.J.S. Seals §§ 1 to 8.

#### **4-2-7. Agricultural Advisory Board created — Composition — Responsibility — Terms of office — Compensation.**

(1) There is created an Agricultural Advisory Board composed of 11 members representing each of the following:

- (a) Utah Farm Bureau Federation;
- (b) Utah Farmers Union;
- (c) Utah Cattlemen's Association;
- (d) Utah Wool Growers' Association;
- (e) Utah Dairymen's Association;
- (f) Utah Veterinary Medical Association;
- (g) Livestock Auction Marketing Association;

- (h) Utah Association of Conservation Districts;
  - (i) the Utah horse industry;
  - (j) the food processing industry; and
  - (k) a consumer affairs group.
- (2) The Agricultural Advisory Board shall advise the commissioner regarding the planning, implementation, and administration of the department's programs.
- (3) (a) Representatives of the organizations cited in Subsections (1)(a) through (1)(h) shall be appointed to the Agricultural Advisory Board by the governor from a list of nominees submitted by each organization.
- (b) Representatives of the groups cited in Subsections (1)(i) through (1)(k) shall be appointed to the Agricultural Advisory Board by the governor from a list of nominees submitted by the commissioner.
- (4) (a) Members are appointed to four-year terms of office.
- (b) Members may be removed at the discretion of the governor upon the request of the group they represent.
- (5) The board shall elect one member to serve as chairman of the Agricultural Advisory Board for a term of one year.
- (6) (a) The board shall meet four times annually, but may meet more often at the discretion of the chairman.
- (b) Attendance of six members at a duly called meeting constitutes a quorum for the transaction of official business.
- (7) Members of the board shall receive per diem and expenses incurred in the performance of their official duties as established by the director of the Division of Finance.

**History:** C. 1953, 4-2-7, enacted by L. 1979, ch. 2, § 3; 1985, ch. 22, § 1; 1986, ch. 194, § 1; 1990, ch. 157, § 2; 1992, ch. 122, § 1.

**Amendment Notes.** — The 1992 amendment, effective April 27, 1992, substituted "11" for "ten" in the introductory language of Subsection (1); deleted "South Idaho" after "Utah" in Subsection (1)(a); inserted Subsection (1)(h) and redesignated the following subsections accordingly; substituted "Subsections (1)(a) through (1)(h)" for "Subsections (1)(a) through (1)(g)" in Subsection (3)(a); in Subsection (3)(b), substituted "Subsections (1)(i) through (1)(k)" for "Subsections (1)(h) through (1)(j)" and in-

serted "by the governor"; subdivided Subsection (4); subdivided Subsection (6); and substituted "at the discretion of the chairman" for "upon the call of the chairman" in Subsection (6)(a) and "six" for "five" in Subsection (6)(b).

**Sunset Act.** — See Section 63-55-204 for the repeal date of the Agricultural Advisory Board.

**Cross-References.** — Bedding, Upholstered Furniture, and Clothing Advisory Committee, § 4-10-12.

Dairy Advisory Board, § 4-3-15.

Emergency water resource funds, consultation with board on expenditure, § 73-20-5.

Pesticide Committee, § 4-14-10.

## 4-2-8. Temporary advisory committees — Appointment — Compensation.

The commissioner may request the governor to appoint other advisory committees on a temporary basis to offer technical advice to the department. Members of any such committee shall serve at the pleasure of the commissioner and be compensated at the rates established by the director of the Division of Finance under Sections 63A-3-106 and 63A-3-107.

**History:** C. 1953, 4-2-8, enacted by L. 1979, ch. 2, § 3; 1986, ch. 194, § 2; 1993, ch. 212, § 1.

**Amendment Notes.** — The 1993 amend-

ment, effective May 3, 1993, substituted "at the rates" for "as" and "under Sections 63A-3-106 and 63A-3-107" for "in Section 63-1-14.5 and 63-1-15" in the second sentence.

## PART 2

### STATE CHEMIST

#### 4-2-9. Appointment.

The state chemist shall be appointed by the commissioner, subject to the provisions of the State Merit System (Sections 67-13-2 through 67-13-15), and shall serve in that position subject to its provisions.

**History:** C. 1953, 4-2-9, enacted by L. 1979, ch. 2, § 3.

**Compiler's Notes.** — The State Merit System (§§ 67-13-2 through 67-13-15), referred to

in this section, was repealed by Laws 1979, ch. 139, § 36. For present provisions, see Title 67, Chapter 19, the Utah State Personnel Management Act.

#### 4-2-10. Responsibilities.

The state chemist shall serve as the chief administrative officer of the Division of Laboratories and shall be responsible for the supervision and administration of all analytical tests required to be performed under this code or under any regulations promulgated pursuant to it. The state chemist may perform analytical tests for other state agencies, federal agencies, units of local government and private persons if such tests and analytical work do not interfere with, or impede, the work required by the department, and if a charge commensurate with the work involved is made and collected. The state chemist shall perform any other official duties assigned by the commissioner.

**History:** C. 1953, 4-2-10, enacted by L. 1979, ch. 2, § 3.

**Cross-References.** — Liquor control prosecutions, reports of chemist as evidence, § 32A-12-102.

Livestock disease, assistance of chemist in diagnosis, § 4-31-18.

## PART 3

### ENFORCEMENT AND PENALTIES

#### 4-2-11. Attorney general legal advisor for department — County or district attorney may bring action upon request of department for violations of title.

(1) The attorney general is the legal advisor for the department and shall defend the department and its representatives in all actions and proceedings brought against it.

(2) The county attorney or the district attorney as provided under Sections 17-18-1, 17-18-1.5, and 17-18-1.7 of the county in which a cause of action arises or a public offense occurs may bring civil or criminal action, upon request of the department, to enforce the laws, standards, orders, and rules of the department or to prosecute violations of this title. If the county attorney or district attorney fails to act, the department may request the attorney general to bring an action on behalf of the department.

**History:** C. 1953, 4-2-11, enacted by L. 1985, ch. 104 § 2; 1993, ch. 38, § 2.

**Amendment Notes.** — The 1993 amendment, effective May 3, 1993, inserted “or the

district attorney as provided under Sections 17-18-1, 17-18-1.5, and 17-18-1.7” in the first sentence and “or district attorney” in the second sentence of Subsection (2).

#### **4-2-12. Notice of violation — Order for corrective action.**

(1) Whenever the department determines that any person, or any officer or employee of any person, is violating any requirement of this title or rules adopted under this title, the department shall serve written notice upon the alleged violator which specifies the violation and alleges the facts constituting the violation.

(2) After serving notice as required in Subsection (1), the department may issue an order for necessary corrective action and request the attorney general or the county attorney to seek injunctive relief and enforcement of the order as provided in Subsection 4-2-11(2).

**History:** C. 1953, 4-2-12, enacted by L. 1985, ch. 104, § 3.

#### **4-2-13. Repealed.**

**Repeals.** — Laws 1987, ch. 161, § 314, repeals § 4-2-13, as enacted by Laws 1985, ch.

104, § 4, relating to hearings and judicial review, effective January 1, 1988.

#### **4-2-14. Violations of title unlawful.**

It is unlawful for any person, or the officers or employees of any person, to willfully violate, disobey, or disregard this title or any notice or order issued under this title.

**History:** C. 1953, 4-2-14, enacted by L. 1985, ch. 104, § 5.

#### **4-2-15. Civil and criminal penalties — Costs — Civil liability.**

(1) Except as otherwise provided by this title, any person, or the officers or employees of any person, who violates this title or any lawful notice or order issued pursuant to this title shall be assessed a penalty not to exceed \$5,000 per violation in a civil proceeding, and in a criminal proceeding is guilty of a class B misdemeanor. A subsequent criminal violation within two years is a class A misdemeanor.

(2) Any person, or the officers or employees of any person, shall be liable for any expenses incurred by the department in abating any violation of this title.

(3) A penalty assessment or criminal conviction under this title shall not relieve the person assessed or convicted from civil liability for claims arising out of any act which was also a violation.

**History:** C. 1953, 4-2-15, enacted by L. 1985, ch. 104, § 6.

Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

**Cross-References.** — Sale of adulterated or mislabeled commodities as misdemeanor, § 76-6-507.

## COLLATERAL REFERENCES

**Am. Jur. 2d.** — 35 Am. Jur. 2d Food § 74.  
**C.J.S.** — 36A C.J.S. Food § 30.

**Key Numbers.** — Food ⇌ 16.

## CHAPTER 3

### UTAH DAIRY ACT

Section		Section	
4-3-1.	Definitions.		Suspension or revocation — Grounds.
4-3-2.	Authority to make and enforce regulations.	4-3-10.	Unlawful acts specified.
4-3-3.	Authority in local jurisdictions to regulate dairy products — Department standards to govern — Department evaluation permitted — Local notice to cease inspection.	4-3-11.	Processors, manufacturers, or distributors — Unlawful to give money, equipment, or fixtures to consumer — Exceptions — Shelf space for dairy products.
4-3-4.	Authority to inspect premises.	4-3-12.	Injunctions — Bond not required — Standing to maintain private action — Damages authorized.
4-3-5.	Authority to collect samples — Receipt — Names of distributors.	4-3-13.	Milk or milk products consumed by owner of farm exempt.
4-3-6.	Condemnation, embargo, denaturing of unfit milk or dairy products — Unfit equipment.	4-3-14.	Sale of raw milk prohibited — Exceptions — Suspension of producer's permit.
4-3-7.	Testing and measuring milk — Standards prescribed — Milk quality work in accordance with regulations.	4-3-15.	Dairy Advisory Board created — Composition — Appointment — Removal — Compensation — Responsibilities.
4-3-8.	Licenses and permits — Application — Fee — Expiration — Renewal.	4-3-16.	Repealed.
4-3-9.	Licenses, permits, and certificates —		

#### 4-3-1. Definitions.

As used in this chapter:

(1) "Adulterated" means any dairy product which:

(a) contains any poisonous or deleterious substance that may render it injurious to health;

(b) has been produced, prepared, packaged, or held under unsanitary conditions, or where it may have become contaminated or where it may have become diseased or injurious to health;

(c) contains any food additive that is unsafe within the meaning of Section 409 of the Federal Food, Drug and Cosmetic Act;

(d) contains any filthy, putrid, or decomposed substance, or fresh fluid milk which contains lactic acid at or above the level of .18 of 1%, or cream with a lactic acid level at or above .8 of 1%, or which is otherwise unfit for human food;

(e) is the product of a diseased animal or an animal which died otherwise than by slaughter, or an animal fed upon uncooked offal;

(f) has intentionally been subjected to radiation, unless the use of the radiation is in conformity with a regulation or exemption promulgated by the department; or

(g) has any valuable constituent omitted or abstracted, or which has any substance substituted in whole or in part therefor, or which has damage or inferiority concealed in any manner, or which has any substance added, mixed, or packed with the product to increase its



bulk or weight, or reduce its quality or strength, or make it appear better or of greater value.

(2) "Dairy product" means any product derived from raw or pasteurized milk.

(3) "Distributor" means any person who distributes a dairy product.

(4) "Filled milk" means any milk, cream, or skimmed milk, whether condensed, evaporated, concentrated, powdered, dried, or desiccated, which has fat or oil other than milk fat added, blended, or compounded with it so that the resultant product is an imitation or semblance of milk, cream, or skimmed milk. It does not include any distinctive proprietary food compound which is prepared and designated for feeding infants and young children which is customarily used upon the order of a licensed physician; provided, that the word "milk" does not appear in the product name or in any statement on the label, and that the label conforms with the food labeling requirements.

(5) "Frozen dairy products" mean dairy products normally served to the consumer in a frozen or semifrozen state.

(6) "Grade A milk," "grade A milk products," and "milk" for the purposes of this chapter have the same meaning that is accorded such terms in the federal standards for grade A milk and grade A milk products unless modified by regulations of the department.

(7) "License" means a document allowing a person or plant to process, manufacture, supply, test, haul, or pasteurize milk or milk products or conduct such other activity as specified by the license.

(8) "Manufacturer" means any person who processes milk in such a way that its character is changed.

(9) "Manufacturing milk" means milk used in the production of non-grade A dairy products.

(10) "Misbranded" means any dairy product whose label is false or misleading in any particular, or whose label or package fails to conform to any federal regulation adopted by the department which pertains to packaging and labeling. It also means:

(a) any dairy product in final packaged form manufactured in this state which does not bear the manufacturer's, packer's, or distributor's name, address, and plant number, if applicable; and, a clear statement of the product's common or usual name, quantity, and ingredients, if applicable, and any other information required by regulation of the department;

(b) any butter in consumer package form that is not at least B grade, or that does not meet the grade claimed on the package, measured by U.S.D.A. butter grade standards;

(c) any imitation butter made in whole or in part from material other than wholesome milk or cream, except clearly labeled "margarine";

(d) renovated butter unless the words "renovated butter," in letters not less than ½-inch in height appear on each package, roll, square, or container of such butter; or

(e) any dairy product in final packaged form which makes nutritional claims or adds or adjusts nutrients that are not so labeled.

(11) "Pasteurization" means any process which renders dairy products practically free of disease organisms and is accepted by federal standards.



(12) "Permit or certificate" means a document allowing a person to market milk.

(13) "Plant" means any facility where milk is processed or manufactured.

(14) "Processor" means any person who subjects milk to a process.

(15) "Producer" means a person who owns cows that produce milk for consumption by persons other than the producer's family, employees, or nonpaying guests.

(16) "Raw milk" means unpasteurized milk.

(17) "Renovated butter" means butter that is reduced to a liquid state by melting and drawing off such liquid or butter oil and churning or otherwise manipulating it in connection with milk or any product of milk.

(18) "Retailer" means any person who sells or distributes dairy products directly to the consumer.

**History:** C. 1953, 4-3-1, enacted by L. 1979, ch. 2, § 4.

**Federal Law.** — Section 409 of the Federal Food, Drug and Cosmetic Act, cited in Subsec-

tion (1)(c), is 21 U.S.C. § 348.

**Cross-References.** — Dairy promotion, Chapter 22 of this title.

Food wholesomeness, Chapter 5 of this title.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 35 Am. Jur. 2d Food §§ 1 to 32, 41 to 43, 47 to 73.

**C.J.S.** — 36A C.J.S. Food §§ 1 to 7, 10 to 18.

**A.L.R.** — Liability for injury or death allegedly caused by spoilage, contamination, or other deleterious condition of food or food product, 2 A.L.R.5th 1.

Liability for injury or death allegedly caused by food product containing object related to, but not intended to be present in, product, 2 A.L.R.5th 189.

**Key Numbers.** — Food ⇌ 1 to 8.

### 4-3-2. Authority to make and enforce regulations.

The department is authorized and directed, subject to the Utah [Administrative] Rulemaking Act, to make and enforce such regulations as may in its judgment and discretion be necessary to carry out the purposes of this chapter.

**History:** C. 1953, 4-3-2, enacted by L. 1979, ch. 2, § 4.

**Cross-References.** — Enforcement of Agricultural Code, § 4-1-4.

Utah Administrative Rulemaking Act, Title 63, Chapter 46a.

### 4-3-3. Authority in local jurisdictions to regulate dairy products — Department standards to govern — Department evaluation permitted — Local notice to cease inspection.

While nothing in this chapter shall impair the authority of any town, city, or county to regulate the production, handling, storage, distribution, or sale of dairy products, frozen dairy products, grade A milk, grade A milk products, or milk, within their respective jurisdictions, a common standard as prescribed by the department shall be followed in such jurisdictions.

If a town, city, or county elects to enforce this chapter, the department shall accept its findings relative to inspections in lieu of making its own inspections, but the department may evaluate the effectiveness of any local inspection

program. If a town, city, or county intends to cease making inspections under this chapter, it shall notify the department of its intent to cease inspection at least one year in advance of the actual cessation of inspection.

Upon request, the commissioner shall cooperate with other state agencies, towns, cities, counties, and federal authorities in the administration and enforcement of this chapter.

**History:** C. 1953, 4-3-3, enacted by L. and inspection of butter and cheese, §§ 10-8-1979, ch. 2, § 4. 43, 10-8-44.

**Cross-References.** — Municipal regulation Municipal regulation of dairies, § 10-8-66.

#### **4-3-4. Authority to inspect premises.**

The department may inspect any premises where dairy products are produced, manufactured, processed, stored, or held for distribution, at reasonable times and places, to determine whether such premises are in compliance with this chapter and the regulations promulgated pursuant to it. If access is denied the department, it may proceed immediately to the nearest court of competent jurisdiction and seek an ex parte warrant or its equivalent to permit inspection of the premises.

**History:** C. 1953, 4-3-4, enacted by L. 1979, ch. 2, § 4.

#### **4-3-5. Authority to collect samples — Receipt — Names of distributors.**

(1) Samples of dairy products from each dairy farm or processing plant may be secured and examined as often as deemed necessary by the department.

(2) Samples of dairy products from stores, cafes, soda fountains, restaurants, and other places where dairy products are sold may be secured and examined as often as deemed necessary by the department.

(3) Samples of milk or dairy products may be taken by the department at any time before final delivery to the consumer.

(4) The department shall provide a signed receipt for all samples taken showing the date of sampling and the amount and kind of sample taken; provided, that the department is not liable to any person for the cost of any sample taken.

(5) All proprietors of stores, cafes, restaurants, soda fountains, and other similar places shall furnish the department, upon request, with the names of all distributors from whom dairy products are obtained.

**History:** C. 1953, 4-3-5, enacted by L. 1979, ch. 2, § 4.

#### **4-3-6. Condemnation, embargo, denaturing of unfit milk or dairy products — Unfit equipment.**

(1) The department may condemn or embargo any milk or dairy product which is adulterated, misbranded, or not produced or processed in accordance with this chapter.

(2) The department may condemn the use of any equipment, tank, or container used to produce, process, manufacture, or transport milk or dairy products that it finds, upon inspection, to be unclean or contaminated.

(3) The department may mark or tag any condemned equipment, tank, or container with the words "this (equipment, tank, or container) is unfit to contain human food."

(4) Condemned milk shall be decharacterized or denatured with harmless coloring or rennet by the department.

**History:** C. 1953, 4-3-6, enacted by L. 1979, ch. 2, § 4.

#### **4-3-7. Testing and measuring milk — Standards prescribed — Milk quality work in accordance with regulations.**

Methods in accordance with those prescribed in the latest edition of "Association of Official Analytical Chemists," or the latest edition of "Standard Methods for Examination of Dairy Products," or in accordance with other publications accepted by the department, or in accordance with methods prescribed by the department shall be used for testing and measuring milk.

Milk quality work shall be performed by the processor or manufacturer in accordance with the rules and regulations adopted by the department.

**History:** C. 1953, 4-3-7, enacted by L. 1979, ch. 2, § 4.

#### **4-3-8. Licenses and permits — Application — Fee — Expiration — Renewal.**

(1) Application for a license to operate a plant or to manufacture butter or cheese, pasteurize milk, test milk for payment, or haul milk in bulk shall be made to the department upon forms prescribed and furnished by it. Upon receipt of a proper application, compliance with all applicable regulations, and payment of a license fee determined by the department pursuant to Subsection 4-2-2(2), the commissioner, if satisfied that the public convenience and necessity and the industry will be served, shall issue an appropriate license to the applicant subject to suspension or revocation for cause. Each license issued under this section expires at midnight on December 31 of each year. A license to operate a plant or to manufacture butter or cheese, pasteurize milk, test milk for payment, or to haul milk in bulk is renewable for a period of one year upon the payment of an annual license renewal fee determined by the department pursuant to Subsection 4-2-2(2) on or before December 31 of each year.

(2) Application for a permit or certificate to produce milk shall be made to the department on forms prescribed and furnished by it. Upon receipt of a proper application and compliance with all applicable regulations, the commissioner shall issue a permit entitling the applicant to engage in the business of producer, subject to suspension or revocation for cause. No fee may be charged by the department for issuance of a permit or certificate.

**History:** C. 1953, 4-3-8, enacted by L.  
1979, ch. 2, § 4; 1984 (2nd S.S.), ch. 15, § 7;  
1985, ch. 130, § 3.

#### **4-3-9. Licenses, permits, and certificates — Suspension or revocation — Grounds.**

(1) The department may revoke or suspend the license, permit, or certification of any person who violates this chapter or any rule enacted under the authority of this chapter.

(2) All or part of any license, permit, or certification may be suspended immediately if an emergency exists that presents a clear and present danger to the public health, or if inspection or sampling is refused.

**History:** C. 1953, 4-3-9, enacted by L.  
1979, ch. 2, § 4; 1987, ch. 161, § 10.

**Cross-References.** — Procedure for suspension or revocation, § 4-1-5.

#### **4-3-10. Unlawful acts specified.**

It is unlawful for any person in this state to:

- (1) operate a plant without a license issued by the department;
- (2) market milk without a permit or certificate issued by the department;
- (3) manufacture butter or cheese, pasteurize milk, test milk for payment, or haul milk in bulk without a special license to perform the particular activity designated in this subsection; provided, that if more than one person working in a plant is engaged in the performance of a single activity designated in this subsection, it is sufficient if the person who directs the activity is licensed;
- (4) manufacture, distribute, sell, deliver, hold, store, or offer for sale any adulterated or misbranded dairy product;
- (5) manufacture, distribute, sell, deliver, hold, store, or offer for sale any dairy product without a license, permit, or certificate required by this chapter;
- (6) sell or offer for sale any milk not intended for human consumption unless it is denatured or decharacterized in accordance with the regulations of the department;
- (7) manufacture, distribute, sell, or offer for sale any filled milk labeled as milk or as a dairy product;
- (8) keep any animals with brucellosis, tuberculosis, or other infectious or contagious diseases communicable to humans in any place where they may come in contact with cows or other milking animals;
- (9) draw milk for human food from cows or other milking animals that are infected with tuberculosis, running sores, communicable diseases, or from animals that are fed feed that will produce milk that is adulterated;
- (10) accept, or process milk from any producer without verification that the producer holds a valid permit or certification or, if milk is accepted from out of the state, without verification that the producer holds a permit or certification from the appropriate regulatory agency of that state;
- (11) use any contaminated or unclean equipment or container to process, manufacture, distribute, deliver, or sell a dairy product;

(12) remove, change, conceal, erase, or obliterate any mark or tag placed upon any equipment, tank, or container by the department; except, for the purpose of cleaning and sanitizing it;

(13) use any tank or container used for the transportation of milk or other dairy products which is unclean or contaminated;

(14) refuse to allow the department to take samples for testing; or

(15) prohibit adding vitamin compounds in the processing of milk and dairy products in accordance with regulations of the department.

**History:** C. 1953, 4-3-10, enacted by L. 1979, ch. 2, § 4.

#### **4-3-11. Processors, manufacturers, or distributors — Unlawful to give money, equipment, or fixtures to consumer — Exceptions — Shelf space for dairy products.**

(1) No processor, manufacturer, distributor, or his affiliates, subsidiaries, associates, agents or stockholders shall furnish, service, repair, give, lease, sell, or loan to a retailer or consumer any:

(a) money;

(b) equipment;

(c) fixtures, including ice cream cabinets or bulk milk dispensers;

(d) supplies, excluding expendable supplies commonly provided in connection with the sale of dairy products to a consumer; or

(e) other things having a real or substantial value.

(2) The leasing or renting of cabinets, dispensers, or coolers for dairy products for civic affairs, demonstrations, or exhibits is prohibited unless it is for a period of ten days or less in any one period of three consecutive months.

(3) (a) No retailer shall lease, sell, loan, or receive anything of value in exchange for shelf or refrigerator space for dairy products to a processor, manufacturer, or distributor.

(b) Subsection (a) shall not apply to a dairy by-product that is:

(i) a short-term special; or

(ii) a new product being introduced on a trial basis for a period not to exceed 45 days.

**History:** C. 1953, 4-3-11, enacted by L. 1979, ch. 2, § 4; 1990, ch. 157, § 3.

#### **COLLATERAL REFERENCES**

**A.L.R.** — Federal pre-emption of state food labeling legislation or regulation, 79 A.L.R. Fed. 181.

Validity, under commerce clause (Art. I, § 8, cl. 3), of state statutes regulating labeling of food, 79 A.L.R. Fed. 246.

#### **4-3-12. Injunctions — Bond not required — Standing to maintain private action — Damages authorized.**

(1) The commissioner is authorized to apply to any court of competent jurisdiction for a temporary restraining order or injunction restraining any



person from violating this chapter. No bond shall be required of the department in any proceeding brought under this subsection.

(2) In addition to penalties provided in this chapter, any person who suffers or is threatened with injury from any existing or threatened violation of Section 4-3-11 may commence an action in any court of competent jurisdiction for damages and, if proper, injunctive relief. Any organized and existing trade association, whether incorporated or not, is authorized to institute and prosecute a suit for injunctive relief and damages, as the real party in interest, on behalf of one or more of its members if the violation of Section 4-3-11 directly or indirectly affects a member.

History: C. 1953, 4-3-12, enacted by L.  
1979, ch. 2, § 4.

#### **4-3-13. Milk or milk products consumed by owner of farm exempt.**

This chapter is inapplicable to milk or milk products produced on the farm if such milk or milk products are consumed by the owner of the farm or members of such owner's immediate family.

History: C. 1953, 4-3-13, enacted by L.  
1979, ch. 2, § 4.

#### **4-3-14. Sale of raw milk prohibited — Exceptions — Suspension of producer's permit.**

- (1) The sale of raw milk is prohibited unless:
  - (a) The producer holds a permit issued by the department.
  - (b) The sale and delivery of the milk is made upon the premises where the milk is produced.
  - (c) The sale is to consumers for household use and not for resale.
  - (d) The milk is bottled or otherwise contained on the premises where the milk is produced in sanitary containers furnished by the producer under sanitary conditions, labeled "raw milk," and meets the other labeling requirements.
  - (e) The milk is cooled to 50 degrees or lower Fahrenheit within one hour after being drawn from the cow and maintained at such temperature until delivered to the consumer.
  - (f) The bacterial plate count of the milk does not exceed 20,000 per c.c. or the direct microscopic count of which does not exceed 20,000 per c.c. if individual colonies are counted, or 80,000 per c.c. if individual organisms are counted and meets the coliform count, and bacterial and coliform enforcement standards for grade A pasteurized milk.
  - (g) The production of the milk conforms in all other particulars to state law and departmental regulations for the production of grade A milk.
  - (h) All dairy animals on the premises are identified by a mark or breed registration papers and are free of tuberculosis, brucellosis, and other diseases carried through milk.
  - (i) All persons on the premises performing any work in connection with the production, bottling, handling, or sale of the raw milk are free from communicable disease.



(2) If the department finds that the production, handling, or sale of milk or the bacteria counts violate those allowed by this section, or that the health of any person or dairy animal offends this section, the permit of such raw milk producer shall be suspended until such time as compliance is had with this section.

**History:** C. 1953, 4-3-14, enacted by L. 1979, ch. 2, § 4; 1980, ch. 1, § 2.

#### **4-3-15. Dairy Advisory Board created — Composition — Appointment — Removal — Compensation — Responsibilities.**

(1) There is created a Dairy Advisory Board composed of five members appointed to three-year terms of office by the commissioner. Three members shall be active dairy producers recommended by producer organizations and the remaining two members a grade A milk processor and a non-grade A milk processor, respectively. If a nominee is rejected by the commissioner, the recommending authority shall submit another nominee.

(2) A member may, at the commissioner's discretion, be removed upon the request of the organization that recommended the appointment. One member shall be designated by the commissioner to serve as chairman who is responsible for the call and conduct of meetings of the Dairy Advisory Board. Attendance of a simple majority of the members at a duly-called meeting shall constitute a quorum for the transaction of official business. Members are entitled to per diem and expenses as established in Sections 63A-3-106 and 63A-3-107.

(3) The Dairy Advisory Board shall confer with and advise the department concerning the planning and implementation of programs affecting the dairy industry and concerning the administration of this chapter.

**History:** C. 1953, 4-3-15, enacted by L. 1979, ch. 2, § 4; 1993, ch. 4, § 1; 1994, ch. 12, § 1.

**Amendment Notes.** — The 1993 amendment, effective May 3, 1993, added subsection designations and substituted "as established in Sections 63-1-14.5 and 63-1-15" for "in accor-

dance with Section 63-2-15" at the end of Subsection (2).

The 1994 amendment, effective May 2, 1994, corrected the references at the end of Subsection (2).

**Sunset Act.** — See Section 63-55-204 for the repeal date of the Dairy Advisory Board.

#### **4-3-16. Repealed.**

**Repeals.** — Section 4-3-16, as enacted by Laws 1979, ch. 2, § 4, making violations of the

chapter class "B" misdemeanors, was repealed by Laws 1985, ch. 104, § 8.

## **CHAPTER 4**

### **EGGS**

Section		Section	
4-4-1.	Department to establish egg grades and standards.	4-4-3.	Definitions.
4-4-2.	Authority to make and enforce regulations.	4-4-4.	Unlawful acts specified.
		4-4-5.	Maintenance of candling records — Inspection of records.

Section 4-4-6.	Retailers exempt from prosecution — Conditions for exemption.	Section 4-4-7.	Repealed.
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#### 4-4-1. Department to establish egg grades and standards.

The department shall establish grades and standards of quality, size, and weight governing the sale of eggs.

**History:** C. 1953, 4-4-1, enacted by L. 1979, ch. 2, § 5.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 35 Am. Jur. 2d Food § 38.  
**C.J.S.** — 36A C.J.S. Food § 3.

**Key Numbers.** — Food ⇌ 2.

#### 4-4-2. Authority to make and enforce regulations.

The department is authorized, subject to the Utah [Administrative] Rulemaking Act, to make and enforce such regulations as in its judgment are necessary to administer and enforce this chapter.

**History:** C. 1953, 4-4-2, enacted by L. 1979, ch. 2, § 5.

Utah Administrative Rulemaking Act, Title 63, Chapter 46a.

**Cross-References.** — Enforcement of Agricultural Code, § 4-1-4.

#### 4-4-3. Definitions.

As used in this chapter:

- (1) "Addled" or "white rot" means putrid or rotten.
- (2) "Adherent yolk" means the yolk has settled to one side and become fastened to the shell.
- (3) "Black rot" means the egg has deteriorated to such an extent that the whole interior presents a blackened appearance.
- (4) "Black spot" means mould or bacteria have developed in isolated areas inside the shell.
- (5) "Blood ring" means bacteria have developed to such an extent that blood is formed.
- (6) "Candling" means the act of determining the condition of an egg by holding it before a strong light in such a way that it shines through the egg and reveals its contents.
- (7) "Mouldy" means mould spores have formed within the shell.

**History:** C. 1953, 4-4-3, enacted by L. 1979, ch. 2, § 5.

#### 4-4-4. Unlawful acts specified.

It is unlawful for any person to:

- (1) sell, offer, or expose any egg for sale for human consumption which is addled or mouldy, or which contains black spot, black rot, white rot, blood ring, adherent yolk, or a bloody or green white (albumen); or

(2) sell, offer, or expose any egg for sale for human consumption without a sign or label which conforms to the standards for display and grade adopted by the department.

Nothing in this section, however, shall prohibit the sale of denatured eggs.

**History:** C. 1953, 4-4-4, enacted by L. 1979, ch. 2, § 5.

#### COLLATERAL REFERENCES

**A.L.R.** — Federal pre-emption of state food labeling legislation or regulation, 79 A.L.R. Fed. 181.

Validity, under commerce clause (Art. I, § 8, cl. 3), of state statutes regulating labeling of food, 79 A.L.R. Fed. 246.

### 4-4-5. Maintenance of candling records — Inspection of records.

Every person who sells, offers, or exposes eggs for sale or exchange shall maintain candling records as prescribed by the department. All candling records shall be open for examination by accredited inspectors or representatives of the department at reasonable times.

**History:** C. 1953, 4-4-5, enacted by L. 1979, ch. 2, § 5.

### 4-4-6. Retailers exempt from prosecution — Conditions for exemption.

No retailer is subject to prosecution under this chapter if the retailer can establish that at the time the eggs were purchased the seller guaranteed that the eggs conformed to the grade and quality and size and weight stated in the purchase invoice and that the eggs were labeled for sale by the retailer in accordance with the purchase invoice; provided, that such guaranty by the seller does not exempt a retailer from prosecution if the eggs covered by the guaranty deteriorated to a lower grade or standard through some action or inaction of the retailer.

**History:** C. 1953, 4-4-6, enacted by L. 1979, ch. 2, § 5.

### 4-4-7. Repealed.

**Repeals.** — Section 4-4-7, as enacted by Laws 1979, ch. 2, § 5, making violations of this chapter class "B" misdemeanors, was repealed by Laws 1985, ch. 104, § 8.

## CHAPTER 5

# UTAH WHOLESOME FOOD ACT

Section  
4-5-1. Short title.  
4-5-2. Definitions.  
4-5-3. Unlawful acts specified.

Section  
4-5-4. Defenses.  
4-5-5. Adulterated or misbranded articles  
— Tagging — Detention or em-